IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

&

THE HONOURABLE MR.JUSTICE K. V. JAYAKUMAR

MONDAY, THE 23RD DAY OF NOVEMBER 2026 / 2ND AGRAHAYANA, 1948

CRL.A NO. 1383 OF 2026

CRIME NO.0/0 OF NATIONAL INVESTIGATION AGENCY KOCHI, ERNAKULAM

AGAINST THE ORDER DATED 18.09.2026 IN CRMP 2/2026 IN SC NO.1 OF 2026 OF SPECIAL COURT FOR TRIAL OF NIA CASES,ERNAKULAM

APPELLANT/PETITIONER/ACCUSED NO.2:

MUHAMMED ASMIN
AGED 50 YEARS
HIGH SECURITY PRISON, VIYYUR, PIN - 630302

BY ADV.
SRI.NIREESH MATHEW

RESPONDENT/RESPONDENT/COMPLAINANT:

UNION OF INDIA
REPRESENTED BY SUPERINTENDENT OF POLICE,

NATIONAL INVESTIGATION AGENCY,
REPRESENTED BY ADDL. SOLICITOR GENERAL OF INDIA,
HIGH COURT OF KERALA, ERNAKULAM., PIN - 682031

BY ADVS.
SRI. P. SREEKUMAR, ASGI
SRI.AMAL PARTHASARADHY, CGC

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 23.11.2026, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

"CR"

JUDGMENT

Raja Vijayaraghavan V, J.

The above-captioned Criminal Appeal is preferred under Section 21 of the National Investigation Agency Act, 2008 being aggrieved by the order in Crl.M.P. No. 2 of 2026 in S.C. No. 1 of 2026/NIA/KOC on the files of the Special Judge (SPE/CBI)-II/Trial of NIA Cases/Additional District and Sessions Judge - IV/PMLA Cases, Ernakulam. By the said order, the application filed by the applicant before the Special Judge seeking bail invoking Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 was rejected.

Brief Facts

2. To appreciate the nature and gravity of the allegations levelled against the appellant, it is necessary to briefly advert to the prosecution case.

a) According to the prosecution, a transnational conspiracy of considerable magnitude and gravity was hatched by foreign drug lords and key operatives of the banned terrorist organisation, the Liberation Tigers of Tamil Eelam (LTTE). The conspirators are alleged to have joined hands with international criminal syndicates operating across Pakistan, Sri Lanka and India,

with the common objective of financing and facilitating the revival of the LTTE through violent and unlawful means.

b) The prosecution alleges that, through a series of clandestine meetings held at beachfront properties in Chennai and within detention facilities in Trichy, the conspirators devised an elaborate plan to channel large quantities of illicit narcotic substances and sophisticated weaponry into the region. The alleged conspiracy eventually came to light following the interception and seizure of substantial quantities of contraband, including more than 300 kilograms of heroin, AK-56 assault rifles and 1,000 rounds of live ammunition.

c) The appellant, a Sri Lankan national who is alleged to have been residing in India on the strength of fraudulently obtained identity documents, is attributed a significant role in the execution of this criminal enterprise. According to the prosecution, he was actively involved in facilitating the movement of drug consignments, handling the proceeds of unlawful transactions through hawala channels and converting the proceeds of crime into cryptocurrency, allegedly with a view to financing terrorist activities and furthering the objectives of the conspiracy.

d) The appellant was therefore charged for having committed offences punishable under Section 120B of the Indian Penal Code, and Sections 17, 18,

20, 38, 39 and 40 of the Unlawful Activities (Prevention) Act, 1967 ('UAPA' for the sake of brevity) and Sections 20(b) (ii)A, 21(c), 23(c), 27A, 28 and 29 of the NDPS Act.

Contentions raised by the appellant:

3. In the application seeking bail, it is contended by the appellant that he was arrested on 19.12.2022. He states that he volunteered to make a full and complete disclosure of all the circumstances within his knowledge relating to the offences and the other persons involved in the offence. The appellant is stated to have given a voluntary statement under Section 164 of the Code of Criminal Procedure before the Metropolitan Chief Criminal Magistrate, Egmore, and made a truthful disclosure regarding all the material facts within his knowledge about the involvement of himself and other accused persons. Based on the same, pardon was granted by the learned Special Court for Trial of NIA Cases, Chennai as per order in Crl.M.P.No.1610/2023 dated 19.12.2023. The pardon was accepted by the appellant and he was thus granted the status of approver.

4. The appellant states that he had approached the High Court of Madras seeking bail and the same was disposed of by the High Court as per by Annexure-1 order dated 31.07.2025, directing the Special Judge to expedite the framing of charges and examine the appellant at the earliest and by fixing a time

frame of 3 months. It is stated that thereafter the case was made over to Ernakulam in terms of the directions issued by the Hon'ble Supreme Court.

5. The appellant states that he had been in custody from 19.12.2022 and almost 4 years have elapsed. It is stated that accused Nos. 8 and 14, who had also turned approvers in a connected case, have been granted bail, but the appellant is still languishing in custody.

Findings of the learned Special Judge:

6. The learned Sessions Judge, after evaluating the facts and circumstances of the case, took the view that Section 306(4)(b) of the Code of Criminal Procedure insists on the continued detention of an approver until the conclusion of the trial. The learned Judge reasoned that the provision is founded on considerations of public interest. The continued custody of an approver, according to the learned Judge, serves the dual purpose of protecting his life and personal safety from possible reprisals at the hands of his former associates and ensuring that the course of justice remains unpolluted by any attempt to influence, intimidate or win him over before he enters the witness box. The Special Court further took the view that the appellant, being a foreign national who had allegedly entered or continued to remain in India on the strength of fraudulent identity documents, was not entitled to be released on bail in view of

the statutory restriction contained in Section 43D(7) of the 'UAPA' for the sake of brevity). The court was also of the view that if enlarged on bail, the appellant might abscond and evade the process of law, particularly having regard to his foreign nationality and alleged unlawful immigration status. By concluding as aforesaid, the learned Special Court dismissed the application for release on bail.

Submissions advanced by the learned counsel on behalf of the appellant:

7. Sri. Nireesh Mathew, the learned counsel appearing for the appellant, submitted that the order passed by the learned Special Judge cannot be sustained under law. Anchoring his arguments on the judgments of this Court in **Abdul Azeez P. V. @ Bava Azeez v. State of Kerala**[1], **Shammi Firoz v. National Investigation Agency**[2] and **Saidevan Thampi and Another v. State of Kerala and Others**[3]**,** Sri. Nireesh Mathew contended that the appellant has been in judicial custody for nearly four years, despite having been tendered pardon and examined as an approver. It is argued that there is no justification for keeping him in custody for such an extended period, particularly when the main accused in the crime has already been enlarged on bail.

8. The learned counsel further submitted that, since the pardon was

[1] [2019 KHC 877]
[2] [2010 (4) KHC 319]
[3] [2013 KHC 694]

tendered by the learned Sessions Judge, the provisions of Section 307 of the Code would govern the matter. Consequently, the statutory restriction contained in Section 306(4)(b) of the Code would have no application to the appellant. It is also contended that, in view of the law laid down by the Hon'ble Supreme Court in **Union of India v. K. A. Najeeb**[4], statutory restrictions on the grant of bail, such as the one contained in Section 43D of the Unlawful Activities (Prevention) Act, cannot curtail the constitutional powers of the High Courts to grant bail where prolonged incarceration infringes the fundamental rights guaranteed under Part III of the Constitution.

Submissions advanced by the learned ASG:

9. Sri P. Sreekumar, the learned Additional Solicitor General of India, on the other hand, has vehemently opposed the prayer for release. A detailed objection has also been filed by the NIA controverting the contentions advanced by the appellant. Drawing attention to the nature, gravity and transnational dimensions of the allegations levelled against the appellant, it is submitted that having accepted the pardon tendered to him, whether under Section 306 or Section 307 of the Code of Criminal Procedure, the appellant cannot seek to claim any benefit or concession beyond what the statutory provisions governing

[4] [(2021) 3 SCC 713]

the grant of pardon contemplate. It is further contended that the statutory embargo contained in Section 43D(7) of the UAPA, operates with full force in the appellant's case and that his release on bail is consequently impermissible. The learned Additional Solicitor General has also placed considerable reliance on Section 306(4)(b) of the Code of Criminal Procedure, which mandates the detention of an approver who has accepted pardon until the conclusion of the trial, unless he is already on bail. It is urged that this requirement is not a mere procedural formality but embodies a legislative policy founded upon compelling considerations of public interest. The provision is intended not only to ensure the availability of the approver to give evidence at the trial but also to protect him from possible threats, inducements and reprisals at the hands of his former associates, thereby preserving the integrity of the prosecution and ensuring that the administration of justice is not compromised. It is therefore contended that the appellant cannot seek to circumvent this statutory requirement by invoking the inherent jurisdiction of this Court. It is urged that the Special Court for Trial of NIA Cases, Chennai, while granting pardon to the appellant, has imposed a condition that the custody of the appellant shall continue until the termination of the trial. It is also submitted that the claim of parity claimed by the appellant cannot be accepted since those persons are not an accused in the present case. Finally, it is submitted that in terms of the directions issued by the Hon'ble

Supreme Court of India, the Government of Kerala has accorded administrative sanction for establishing two Exclusive NIA Special Courts for the expeditious trial and disposal of NIA cases. The Government has also accorded administrative sanction and created 16 posts, including the post of Special Judge. Once the Exclusive NIA Courts commence functioning, the case can be expedited and taken to its logical conclusion.

10. We have carefully considered the submissions advanced by the learned counsel on either side and have perused the entire records. Certain material facts are not in dispute. The appellant was originally arrayed as an accused in the case and, while in judicial custody, he was tendered pardon by the learned Special Judge and was subsequently made an approver. He has been in judicial custody from 19.12.2022 onwards and has thus remained in custody for nearly four years.

Whether the statutory restriction under Section 306(4)(b) Cr.P.C. is attracted?

11. The first question that arises for consideration is whether the restriction contained in Section 306(4)(b) of the Code applies to the appellant, as held by the learned Special Judge.

12. To appreciate the rival contentions, it is necessary to examine the scheme of Sections 306 and 307 of the Code, which deal with the tender of pardon to an accomplice.

13. Section 306 of the Code reads as follows:

> 306. Tender of pardon to accomplice.-- (1) With a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to an offence to which this section applies, the Chief Judicial Magistrate or a Metropolitan Magistrate at any stage of the investigation or inquiry into, or the trial of, the offence, and the Magistrate of the first class inquiring into or trying the offence, at any stage of the inquiry or trial, may tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof.
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> (2) This section applies to--
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> (a) any offence triable exclusively by the Court of Session or by the Court of a Special Judge appointed under the Criminal Law Amendment Act, 1952;
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> (b) any offence punishable with imprisonment which may extend to seven years or with a more severe sentence.
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> (3) Every Magistrate who tenders a pardon under sub-section (1) shall record--
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> (a) his reasons for so doing;
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> (b) whether the tender was or was not accepted by the person to whom it was made, and shall, on application made by the accused, furnish him with a copy of such record free of cost.

(4) Every person accepting a tender of pardon made under sub section (1)--

(a) shall be examined as a witness in the Court of the Magistrate taking cognizance of the offence and in the subsequent trial, if any;

(b) shall, unless he is already on bail, be detained in custody until the termination of the trial.

(5) Where a person has accepted a tender of pardon made under sub-section (1) and has been examined under sub-section (4), the Magistrate taking cognizance of the offence shall, without making any further inquiry in the case,--

(a) commit it for trial--

(i) to the Court of Session if the offence is triable exclusively by that Court or if the Magistrate taking cognizance is the Chief Judicial Magistrate;

(ii) to a Court of Special Judge appointed under the Criminal Law Amendment Act, 1952, if the offence is triable exclusively by that Court;

(b) in any other case, make over the case to the Chief Judicial Magistrate who shall try the case himself.

14. A reading of Section 306 of the Code makes it clear that the Chief Judicial Magistrate and the Metropolitan Magistrate are empowered to tender pardon at any stage of the investigation, inquiry or trial, whereas a Judicial Magistrate of the First Class may do so only during the inquiry or trial. The power to tender pardon under this provision is available in respect of the categories of offences specified in sub-section (2). The provision also requires the Magistrate

tendering pardon to record the reasons for doing so and to indicate whether the person concerned has accepted the tender. Section 306(1) further stipulates that pardon may be tendered on the condition that the person concerned makes a full and true disclosure of all the circumstances within his knowledge relating to the offence and every other person involved in its commission. Significantly, the provision does not confine the power to tender pardon to a person who has already been arrayed as an accused. It refers to any person who is supposed to have been directly or indirectly concerned in, or privy to, the offence. Sub-section (4) prescribes the consequences of accepting a tender of pardon under sub-section (1). Such a person is required to be examined as a witness before the Court of the Magistrate taking cognizance and in the subsequent trial, if any. Clause (b) further provides that, unless the person is already on bail, he shall be detained in custody until the termination of the trial. It is this requirement that is relied on by the prosecution to oppose the appellant's request for release.

15. Now we shall examine Section 307 of the Code. The said provision reads as under:

> 307. Power to direct tender of pardon.-- At any time after commitment of a case but before Judgment is passed, the Court to which the commitment is made may, with a view to obtaining at the trial the evidence of any person supposed to

> have been directly or indirectly concerned in, or privy to, any such offence, tender a pardon on the same condition to such person.

16. Section 307 of the Code empowers the Court of Session, or the Court to which a case has been committed, to tender pardon at any time after commitment but before judgment is pronounced. The object is to secure the evidence of a person who is supposed to have been directly or indirectly concerned in, or privy to, the offence. Section 307 stipulates that pardon should be tendered on the same condition to such persons. In **A. Devendran v. State of Tamil Nadu**[5], it was held by the Hon'ble Supreme Court that the words "same conditions" occurring in Section 307 CrPC refers to the conditions mentioned in Section 306(1) CrPC only, i.e., the person who is tendered pardon should make a full disclosure of whole of the circumstances within his knowledge relating to the offence. It would be apposite to note that Section 307 CrPC does not indicate that the Sessions Court or the Court to which the case is committed, while tendering pardon, has to record its reasons or to record whether the tendering was accepted or not accepted. More importantly, Section 307 does not contain a provision corresponding to Section 306(4)(b), requiring the person accepting pardon to remain in custody until the termination of the trial. We find support from views taken by learned Single Judges of this Court in **Saidevan**

[5] [1997 (11) SCC 720]

Thampi (supra) and in **Shammi Firoz** (supra), in which precedents, the scope of the restriction under Section 306(4)(b) was considered.

17. We shall also consider this issue from a different angle. It would be relevant to note that the investigation is being conducted by the National Investigation Agency under the provisions of the Act of 2008.

18. Section 2(1)(h) of the NIA Act reads as under:

> Section 2(1)(h): "Special Court" means a Court of Session designated as Special Court under section 11 or, as the case may be, under section 22.

19. Section 11 deals with Power of Central Government to designate Court of Session as Special Courts and Section 22 deals with Power of State Government to designate Court of Session as Special Courts.

20. Section 16 of the NIA Act provides for the procedure and powers of Special Courts. Section 16(1) is relevant. The said provision reads as under:

> 16. Procedure and powers of Special Courts
> (1) A Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts that constitute such offence or upon a police report of such facts.
>
> xxxxx xxxxx xxxxx xxxxx

21. Thus, under Section 16(1) of the NIA Act, a Special Court is empowered to take cognizance of an offence directly, without the case being committed to it for trial by a Magistrate. The Special Court is, therefore, a Court of Session designated under the NIA Act, but exercises the additional statutory power of taking cognizance without the usual committal proceedings.

22. The question that arises is whether, in such circumstances, the Special Court can tender pardon by invoking Section 307 of the Code and, if so, whether the restriction contained in Section 306(4)(b) would apply to a person who accepts such pardon.

23. This very issue came up for consideration before this Court in **Shammi Firoz** (supra). In that case, the Special Court constituted under Section 11 of the NIA Act had tendered pardon to the petitioner by invoking Section 307 of the Code. The Court noted that the Special Court was a Court of Session and was competent, by virtue of Section 16(1) of the NIA Act, to take cognizance of the offence without the case being committed to it for trial. After examining the circumstances in which the pardon had been tendered, this Court held that, where the Special Judge, being a Court of Session, had tendered pardon under Section 307 of the Code, the restriction under Section 306(4)(b) would not apply. The Court specifically held that Section 306(4)(b) is attracted only where the

person has accepted a tender of pardon made under Section 306(1) by a Magistrate. It was observed as under in paragraph 15 of the judgment:

> 15. If pardon was granted to the petitioner under S.307 CrPC by the Special Court itself which is a Sessions Court competent to take cognizance of the offence without a committal, then the bar under S.306(4)(b) does not apply. The said provision will be attracted only in the case of a person who has accepted a tender of pardon made under sub-section (1) of S.306 CrPC by a Magistrate. Here, the pardon was tendered by the Special Judge who is a Sessions Judge and that too under S.307 CrPC and, therefore, S.306(4)(b) is not attracted. I am fortified in this conclusion by the decision of the Karnataka High Court in Lakshmamma v. State of Karnataka, 1980 (2) Kar. LJ 178.

24. We may also refer to Section 308 of the Code, which deals with the trial of a person who does not comply with the conditions subject to which pardon was tendered. The provision reads as follows:

> 308. Trial of person not complying with conditions of pardon.--(1) Where, in regard to a person who has accepted a tender of pardon made under Section 306 or Section 307, the Public Prosecutor certifies that in his opinion such person has, either by wilfully concealing anything essential or by giving false evidence, not complied with the condition on which the tender was made, such person may be tried for the offence in respect of which the pardon was so tendered or for any other offence of which he

appears to have been guilty in connection with the same matter, and also for the offence of giving false evidence:

Provided that such person shall not be tried jointly with any of the other accused:

Provided further that such person shall not be tried for the offence of giving false evidence except with the sanction of the High Court, and nothing contained in Section 195 or Section 340 shall apply to that offence.

(2) Any statement made by such person accepting the tender of pardon and recorded by a Magistrate under Section 164 or by a Court under sub-section (4) of Section 306 may be given in evidence against him at such trial.

(3) At such trial, the accused shall be entitled to plead that he has complied with the condition upon which such tender was made; in which case it shall be for the prosecution to prove that the condition has not been complied with.

(4) At such trial, the Court shall--

(a) if it is a Court of Session, before the charge is read out and explained to the accused;

(b) if it is the Court of a Magistrate, before the evidence of the witnesses for the prosecution is taken, ask the accused whether he pleads that he has complied with the conditions on which the tender of pardon was made.

(5) If the accused does so plead, the Court shall record the plea and proceed with the trial and it shall, before passing judgment in the case, find whether or not the accused has complied with the conditions of the pardon, and, if it finds that he has so complied, it shall, notwithstanding anything contained in this Code, pass judgment of acquittal."

25. Section 308 thus provides for the consequences that follow when a person who has accepted pardon under Section 306 or Section 307 fails to comply with the conditions on which the pardon was tendered. If the Public Prosecutor certifies that the person concerned has wilfully concealed an essential fact or given false evidence, he may be proceeded against in accordance with the procedure prescribed therein. The provision also safeguards the person concerned by enabling him to plead that he has duly complied with the conditions of pardon, in which event the burden is on the prosecution to establish the contrary.

26. In other words, the grant of pardon is conditional upon the person making a full and true disclosure of the circumstances within his knowledge. If he fails to honour that undertaking, the consequences contemplated under Section 308 of the Code may follow. The fact that pardon has been tendered under Section 307 does not exempt the person concerned from complying with its conditions.

27. In the case on hand, the pardon was tendered by the Special Court, which is a Court of Session designated under the NIA Act and is competent, under Section 16(1) of that Act, to take cognizance of the offence without the case being committed to it for trial. The records further indicate that

the Special Court tendered pardon to the appellant by invoking Section 307 of the Code. In view of the statutory scheme, we are unable to sustain the finding of the learned Special Judge that the appellant is disentitled to seek release from custody by reason of the restriction contained in Section 306(4)(b) of the Code. The said restriction is expressly attached to a tender of pardon made under Section 306(1). It cannot be extended to a case where pardon has been tendered by the Special Court by invoking Section 307 of the Code. We accordingly hold that Section 306(4)(b) has no application to the appellant in the circumstances of the present case. The learned Special Judge was, therefore, not justified in rejecting the appellant's request for release solely on the ground that Section 306(4)(b) mandates his detention until the termination of the trial.

Whether the restrictions imposed under Section 43D(7) of the UAPA and Section 37 of the NDPS Act would operate against the appellant?

28. The next question is whether the embargo in granting bail under Section 43D(7) would apply. The learned Special Judge has held that in view of Section 43D(7) of the Unlawful Activities (Prevention) Act, 1967, the appellant is not entitled to bail. It would be apposite to refer to Section 43D(7) of the UAPA.

29. Section 43D(7) of the Act reads as under:

Section 43D- Modified application of certain provisions of the Code

> (1) Notwithstanding anything contained in the Code or any other law, every offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code, and "cognizable case" as defined in that clause shall be construed accordingly.
>
> xxxxx xxxxx xxxxx
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> (7) Notwithstanding anything contained in sub-sections (5) and (6), no bail shall be granted to a person accused of an offence punishable under this Act, if he is not an Indian citizen and has entered the country unauthorisedly or illegally except in very exceptional circumstances and for reasons to be recorded in writing. (emphasis supplied)

30. As is evident from the language of Section 43D(7) of the UAPA, the embargo contained therein operates against a person accused of an offence under the Act, who is not an Indian citizen and who has entered India illegally or continues to remain in India beyond the period permitted by law. The provision does not, in terms, extend to a person who has been tendered pardon and has, upon accepting the same, ceased to occupy the position of an accused and become a witness for the prosecution. The same principle would apply to the embargo under Section 37 of the NDPS Act. Though Section 37 imposes stringent restrictions on the grant of bail to persons accused of specified offences under that Act, including offences involving commercial quantities of narcotic substances, its operation is expressly directed against a person accused of such an offence. An approver, whose pardon remains in force, occupies a distinct legal

position. He is no longer before the Court as an accused seeking the concession of bail, but as a prosecution witness whose evidence is required for the adjudication of the charges against the remaining accused. The statutory restrictions governing the release of an accused cannot, therefore, be mechanically extended to an approver merely because the offences in question are grave or attract stringent provisions relating to bail.

31. It has been held by the Apex Court in **State of Maharashtra v. Abu Salem Abdul Kayyum Ansari and Others**[6], that the salutary object of tendering pardon to an accomplice is to unravel the truth in cases involving serious offences and to secure evidence by which the guilt of the other persons concerned in the commission of the crime may be established. The provisions contained in Sections 306 and 307 Cr.P.C. are intended to enable the prosecution, in cases where several persons are alleged to have participated in the commission of a grave offence, to obtain the assistance of one of them as a witness against the others. An accomplice who accepts a tender of pardon under either of these provisions obtains protection from prosecution, subject, of course, to his fulfilment of the conditions attached to the pardon. He is required to make a full and true disclosure of the entire circumstances within his knowledge relating to the offence and the involvement of every other person concerned,

[6] [(2010) 10 SCC 179]

whether as principal or abettor. If he wilfully conceals anything essential or gives false evidence, and the Public Prosecutor furnishes the certificate contemplated under Section 308 Cr.P.C., the protection afforded by the pardon stands withdrawn and he may be proceeded against in accordance with law. The immunity thus available to an approver is conditional; nevertheless, so long as the pardon remains operative, his legal status is that of a witness and not that of an accused.

32. The legal position is further clarified by the decision of the Apex Court in **A.J. Peiris v. State of Madras**[7], wherein it was held that, upon the tender of pardon, the person concerned must be presumed to have been discharged, whereupon he ceases to be an accused and becomes a witness. This principle was reiterated in **Abu Salem Abdul Kayyum Ansari** (supra). It follows that, upon acceptance of the pardon, the appellant has, for the present, ceased to occupy the position of an accused and has assumed the status of a witness for the prosecution. Unless and until the protection flowing from the pardon is withdrawn in accordance with Section 308 Cr.P.C., he cannot be treated as an accused merely for the purpose of attracting the statutory embargoes governing the grant of bail under the UAPA or the NDPS Act. The restrictions

[7] AIR 1954 SC 616

under Section 43D(7) of the UAPA and Section 37 of the NDPS Act are, therefore, not attracted to the appellant in his present capacity as an approver.

Whether prolonged incarceration is a relevant consideration in determining the entitlement to bail, even in cases involving serious offences?

33. The next issue is having regard to the serious nature of the allegations against the applicant, whether he is entitled to be enlarged on bail. We have already noticed that the accused Nos. 8 and 14 in the very same case were granted bail by this Court by Annexure-3 order. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the accusation; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being influenced; and (viii) danger, of course, of justice being thwarted by grant of bail. (**See Prasanta Kumar Sarkar v. Ashis Chatterjee**[8]).

[8] (2010) 14 SCC 496

34. It is equally settled that the presence of statutory restrictions like Section 43-D(5) of the UAPA or Section 37 of the NDPS Act, per se, does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. It has been held that the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence.

35. In **K. A. Najeeb** (supra), the Apex Court has laid down the position in paragraphs 17, 18, and 19 of the judgment, which reads as under:

> "17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy

trial.

18. Adverting to the case at hand, we are conscious of the fact that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the respondent's prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail. An attempt has been made to strike a balance between the appellant's right to lead evidence of its choice and establish the charges beyond any doubt and simultaneously the respondent's rights guaranteed under Part III of our Constitution have been well protected.

19. Yet another reason which persuades us to enlarge the respondent on bail is that Section 43-D(5) of the UAPA is comparatively less stringent than Section 37 of the NDPS Act. Unlike the NDPS Act where the competent court needs to be satisfied that prima facie the accused is not guilty and that he is unlikely to commit another offence while on bail; there is no such precondition under UAPA. Instead, Section 43-D(5) of the UAPA merely provides another possible ground for the competent court to refuse bail, in addition to the well-settled considerations like gravity of the offence, possibility of tampering with evidence, influencing the witnesses or chance of the accused evading the trial by absconsion, etc."

36. In paragraph 42 of **Sheikh Javed Iqbal @Ashfaq Ansari @**

Javed Ansari v. State of Uttar Pradesh[9], the Apex Court observed as under:

> "42. This Court has, time and again, emphasised that right to life and personal liberty enshrined under Article 21 of the Constitution of India is overarching and sacrosanct. A constitutional court cannot be restrained from granting bail to an accused on account of restrictive statutory provisions in a penal statute if it finds that the right of the accused-undertrial under Article 21of the Constitution of India has been infringed. In that event, such statutory restrictions would not come in the way. Even in the case of interpretation of a penal statute, howsoever stringent it may be, a constitutional court has to lean in favour of constitutionalism and the rule of law of which liberty is an intrinsic part. In the given facts of a particular case, a constitutional court may decline to grant bail. But it would be very wrong to say that under a particular statute, bail cannot be granted. It would run counter to the very grain of our constitutional jurisprudence. In any view of the matter, K.A. Najeeb [Union of India v. K.A. Najeeb, (2021) 3 SCC 713] being rendered by a three-Judge Bench is binding on a Bench of two Judges like us."

37. The Apex Court in **Javed Gulam Nabi Shaikh v. State of Maharashtra**[10], **Rabi Prakash v. State of Odisha**[11] and **Athar Parwez v. Union of India**[12] has emphasized that when a speedy trial is denied to an

[9] [(2024) 8 SCC 293]
[10] [(2024) 9 SCC 813]
[11] [2023 SCC OnLine SC 1109]
[12] [(2024) 20 SC 57]

accused who has suffered prolonged incarceration, the rigorous restriction on the grant of bail with penal statutes would not be a bar for the constitutional court to grant bail.

38. In the case on hand, the appellant has remained in judicial custody for almost four years, notwithstanding the fact that pardon has been tendered to him by the Special Court and he has agreed to assist the prosecution as an approver. In view of the discussion above, the continued detention of the appellant, in the circumstances, cannot be justified by invoking either of the aforesaid provisions.

39. In **Mohd. Muslim @ Hussain v. State (NCT of Delhi)**[13], the Hon'ble Supreme Court, while examining the constitutional implications of prolonged incarceration in prosecutions involving stringent bail restrictions under the NDPS Act, referred to a pathbreaking judgment rendered by Chettur Sankaran Nair, J., a former Judge of this Court, in **A Convict Prisoner v. State**[14], and made the following observations:

> 24."The danger of unjust imprisonment is that inmates are at risk of "prisonisation" a term described by the Kerala High Court in A Convict Prisoner v. State 1993 Cri LJ 3242 as"a radical transformation" whereby the prisoner: "loses his identity. He is

[13] [(2023) 18 SCC 166]
[14] [1993 Cri LJ 3242]

> known by a number. He loses personal possessions. He has no personal relationships. Psychological problems result from loss of freedom, status, possessions, dignity and any autonomy of personal life. The inmate culture of prison turns out to be dreadful. The prisoner becomes hostile by ordinary standards. Self-perception changes.
>
> 25. There is a further danger of the prisoner turning to crime, "as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal" (also see Donald Clemmer's 'The Prison Community' published in 1940). Incarceration has further deleterious effects - where the accused belongs to the weakest economic strata : immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials - especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily.

40. Taking into account the period of incarceration already undergone, the grant of pardon, the fact that some of the co-accused have been enlarged on bail in connected cases and the legal position discussed above, we are of the view that the appellant is entitled to be released, subject to appropriate conditions to ensure his availability for the proceedings, protect the integrity of the prosecution and safeguard the interests of justice. We are, therefore, inclined

to allow this application.

The need to ensure effective implementation of the Witness Protection Scheme:

41. Before parting we would like to observe that Section 398 of the Bharatiya Nagarik Suraksha Sanhita, 2023, casts an obligation upon every State Government to prepare and notify a Witness Protection Scheme for the State with a view to ensuring the safety and security of witnesses. In **Mahender Chawla v. Union of India**[15], the Hon'ble Supreme Court had, in the said judgment, specifically directed that the Draft Scheme placed before the Hon'ble Court has to be implemented across India and a time period was granted. We are given to understand that the draft notification, namely, the Kerala Witness Protection Scheme, 2026 has been prepared and submitted to the Government of Kerala for issuance and that the same is presently under the consideration of the Government. This Court in order dated 18.11.2026 in W.P.(PIL) 213 of 2026 has directed the State to initiate urgent steps towards implementation of the Kerala Witness Protection Scheme and thus to effect full compliance of the directions of the Hon'ble Supreme Court. Having regard to the circumstances of the present case, particularly the appellant's role as an approver and his decision to assist the prosecution by giving evidence against the other accused, this is

[15] [(2019) 14 SCC 615

eminently a case warranting consideration for protection under the said Scheme. The appellant's safety and security must receive due consideration so that he is able to discharge his obligation as a witness without fear, intimidation or apprehension of retaliation.

42. Accordingly, the Secretary to Government, Home Department, shall take immediate steps to ensure that the appellant is brought within the protective framework of the applicable Kerala Witness Protection Scheme and that such protection as may be considered necessary is extended to him in accordance with the provisions of the Scheme. The competent authorities shall undertake an appropriate assessment of the nature and extent of the threat, if any, and determine the measures required to safeguard his life, liberty and personal security. We would like to emphasise that the criminal justice system can function effectively only when persons who come forward to assist the administration of justice, often at considerable personal risk, are assured that their safety will not be compromised on account of their willingness to testify. The protection of witnesses is not merely a matter of individual security; it is an essential prerequisite for the fair and effective administration of criminal justice. A system which expects witnesses to come forward and assist in the prosecution of offenders must also ensure that they are not left vulnerable to threats, intimidation or retaliation.

43. The Registry shall communicate a copy of this order to the Secretary to Government, Home Department, forthwith, for necessary action and to ensure that the directions issued herein are implemented in their letter and spirit.

44. In view of the discussion above, this appeal is allowed, subject to the following conditions:

(i) The appellant shall execute a bond for a sum of Rs.1,00,000/- (Rupees One Lakh only) and furnish two solvent sureties, each for the like sum, to the satisfaction of the Special Court for Trial of NIA Cases, Ernakulam. The sureties shall satisfy the Special Court as to their identity, solvency and capacity to ensure the compliance with the conditions imposed herein by the appellant.

(ii) The appellant shall surrender his passport, if any, before the Special Court forthwith. If he does not possess a passport, he shall file an affidavit before the said Court affirming that he does not hold a valid passport or any other travel document enabling him to travel outside India. He shall not apply for or obtain any fresh passport or travel document without the prior permission of the Special Court.

(iii) The appellant shall furnish his complete residential address, together

with his current mobile telephone number and such other contact particulars as may be available, to the Investigating Officer of the National Investigation Agency (NIA). He shall keep the Investigating Officer informed, in advance, of any proposed change in his residential address or contact particulars. He shall remain within the territorial limits of Ernakulam District and shall not leave the said limits without obtaining the prior permission of the Special Court. He shall also ensure that he is readily available for interrogation or any other lawful requirement of the investigation or trial, whenever called upon by the Investigating Officer.

(iv) Having regard to the fact that the appellant is admittedly a Sri Lankan citizen, it is clarified that the grant of bail under this order shall not confer upon him any right to remain in India, nor shall it operate as a bar to the Foreigners Regional Registration Office (FRRO) or any other competent authority initiating or continuing proceedings in accordance with law under the applicable Laws relating to Foreigners. The competent authorities shall remain at liberty to take such lawful measures as may be warranted concerning his immigration status, including the regulation or restriction of his movement and the requirement to reside at a place designated by such authority. This

order shall not be construed as conferring any immunity upon the appellant from such action.

(v) In the event that the FRRO or any other competent authority does not admit the appellant to a designated facilitation centre, detention centre or other authorised facility, the appellant shall report in person before the Investigating Officer or the designated officer of the NIA at Ernakulam on every Saturday, between 10.00 a.m. and 11.00 a.m., until further orders of the Special Court. The Investigating Officer shall maintain an appropriate record of such attendance. If the appellant is taken into the custody of, or admitted to a facility maintained by, the competent immigration authorities, the requirement of periodic reporting under this clause shall remain subject to such lawful custody or restrictions and shall not be treated as a ground for violating the directions of those authorities.

(vi) The appellant shall not, either directly or indirectly, contact, communicate with, approach or attempt to establish any form of contact with any of the other accused in the case. He shall not make any attempt to influence, intimidate, induce, threaten or otherwise interfere with any prosecution witness or any other person acquainted with the facts of the case. He shall also not undertake any act which

may prejudice the investigation, the prosecution or the fair conduct of the trial.

(vii) The appellant shall not participate in, address or arrange any press conference, media interaction, television or channel discussion, interview or public meeting concerning the facts, evidence or allegations involved in this case. He shall also refrain from making, publishing, circulating or disseminating, either directly or through any intermediary, any statement, comment, post, video or other communication through social media or any other electronic or digital platform concerning the case, its witnesses, the evidence or the other accused, in a manner capable of prejudicing the investigation or the trial or influencing any person connected with the proceedings. This condition shall not, however, restrict any communication or statement made in the course of lawful proceedings before a competent Court.

(viii) The appellant shall not commit any offence while on bail and shall maintain good conduct throughout the period of his release. He shall scrupulously comply with all the conditions imposed by this Court and with any further lawful directions issued by the Special Court in connection with the proceedings.

(ix) Notwithstanding the usual territorial requirements relating to the residence of sureties, the appellant shall be at liberty to furnish solvent sureties residing in other States, provided that their identity, solvency and sufficiency are established to the satisfaction of the Special Court. The Special Court shall be at liberty to insist upon such documents and verification as may be necessary for that purpose.

(x) The appellant shall appear before the Special Court as and when his presence is required, unless specifically exempted by an order of that Court. He shall not, by any act or omission, delay or obstruct the proceedings and shall extend full cooperation for the expeditious completion of the trial.

(xi) In the event of violation of any of the conditions stipulated above, or if any subsequent circumstance warrants reconsideration of the liberty granted to the appellant, the Investigating Officer of the NIA shall be at liberty to approach the Special Court for appropriate orders, including cancellation of bail, in accordance with law. The Special Court shall be at liberty to consider such application on its merits and pass appropriate orders.

The Special Court shall be at liberty to impose such further procedural directions as may be necessary to ensure compliance with the above conditions and the appellant's continued availability for the proceedings.

Sd/-
RAJA VIJAYARAGHAVAN V.,
JUDGE

Sd/-
K.V. JAYAKUMAR,
JUDGE

BR/*PS/23/11/26*

In paragraph 18, "Section 2(h)" is corrected as "Section 2(1)(h)".

The judgment uploaded on 23.11.2026 was deleted and re-uploaded on 24.11.2026.

APPENDIX OF CRL.A NO. 1383 OF 2026

PETITIONER ANNEXURES

Annexure 1	**TRUE PHOTO COPY OF THE COMMON ORDER DATED 31.07.2025 IN CRL.OP.NO.3211/2024 PASSED BY THE HON'BLE HIGH COURT OF JUDICATURE AT MADRAS**
Annexure 2	**TRUE PHOTOCOPY OF THE JUDGMENT, UNION OF INDIA VS. K.A NAJEEB REPORTED IN 2021 KHC ONLINE 6045, DATED 01.02.2021.**
Annexure 3	**TRUE PHOTOCOPY OF THE COMMON ORDER DATED 23.11.2022 IN CRL. APPEAL NO.967/2022 AND CRL.A.NO.1003/2022 PASSED BY THIS HON'BLE COURT**
Annexure 4	**FREE COPY OF THE ORDER DATED 18.09.2026 IN CRL.MP.NO.2/2026 PASSED BY THE COURT OF THE SPECIAL JUDGE (SPE/CBI)-II, TRIAL OF NIA CASES/ADDL. DISTRICT & SESSIONS JUDGE-IV, PMLA CASES, ERNAKULAM**